



**Washington State
Department of Transportation**

Utility Preliminary Engineering Agreement Work by Utility		Organization and Address	
Agreement Number		State Route Number	Section / Location
Control Section Number	Region		
Estimated Percent of Work to be Performed by Consultant %		Actual Cost Limit	Date Agreement Executed
Estimated Percent of Work to be Performed by Utility's Own Force %		Lump Sum Amount	Date Utility Authorized to Proceed With Work

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, by virtue of Title 47 RCW, (hereinafter the "STATE") and the above named organization, (hereinafter the "UTILITY").

WHEREAS, the STATE is planning the construction or improvement of the state route as shown above, and in connection therewith it is necessary to remove and/or relocate or construct certain UTILITY facilities, and

WHEREAS, a preliminary engineering study will be necessary to determine the most feasible disposition of said utility facilities, and

WHEREAS, it is deemed to be in the best public interest for the UTILITY, as owners of said facilities, to perform the necessary preliminary engineering, including the preparation of plans and estimate of cost, and

WHEREAS, this AGREEMENT will be supplemented when it is necessary to perform construction of the UTILITY's facilities.

WHEREAS, the UTILITY has a compensable interest in its facilities and right-of-way by virtue of being located on easements or UTILITY owned right-of-way, and the STATE is obligated to reimburse the UTILITY for the preliminary engineering of these facilities, and the UTILITY is obligated for the cost of any preliminary engineering required for facilities not on easements or UTILITY owned right-of-way, and any costs attributable to any betterment.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

I GENERAL

A scope of work, marked Exhibit "A", and plans/vicinity map, marked Exhibit "C" are attached hereto and by this reference made a part of this AGREEMENT.

Federal-aid Policy Guide - 23 CFR 645A, Subpart A, and amendments thereto, determine and establish the definitions and applicable standards for this AGREEMENT and payment hereunder, and by this reference are incorporated hereby and made a part of this AGREEMENT for all intents and purposes as if fully set forth herein.

If the UTILITY has personnel available to perform the necessary preliminary engineering study to include plans and estimates of cost, the UTILITY shall so indicate by marking the appropriate box above and the UTILITY shall furnish all necessary labor, materials, equipment, and tools required to perform this work.

If the UTILITY is not adequately staffed or equipped to perform all of the work required herein, and the UTILITY desires to have all or part of the work performed by consultant under a contract let by the UTILITY, the UTILITY shall indicate this by marking the appropriate box or boxes above.

The UTILITY agrees that it will obtain written approval from the STATE of the proposed Consultant Contract prior to execution by the UTILITY. If a valid and continuing contract exists between the UTILITY and a consulting firm and the UTILITY desires to have the work required by this AGREEMENT performed under the subject contract, the UTILITY shall provide the STATE with a copy of the CONTRACT for review and approval prior to beginning work.

II PAYMENT

The STATE, in consideration of the faithful performance of the work to be done by the UTILITY, agrees to pay the UTILITY actual direct and related indirect costs incurred on the project up to the limit shown in the heading of the agreement under "Actual Cost Limit", if the actual cost method is the one selected in the heading above. If the lump sum method is selected, the STATE in consideration of the faithful performance of the work to be done by the UTILITY, agrees to pay the UTILITY a lump sum amount as shown above.

The lump sum payment is full compensation for furnishing all materials, labor, tools, and equipment necessary or incidental to completing the work covered by this AGREEMENT.

An itemized estimate of cost for work to be performed by the UTILITY at the STATE's expense marked Exhibit "B" is attached hereto and by this reference made a part of this AGREEMENT.

Partial payments may be made upon request of the UTILITY to cover costs incurred, and are not to be more frequent than one (1) per month. It is agreed that payment of any partial claim will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the UTILITY, the UTILITY agrees to refund such overpayment to the STATE within 30 days.

During the progress of the work and for a period not less than three (3) years from the date of final payment to the UTILITY, the records and accounts pertaining to the work of the project and accounting therefore are to be kept available for inspection and audit by the STATE and/or Federal Government and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 3-year retention period.

The UTILITY shall submit a final billing to the STATE within 90 calendar days following completion of the work involved.

III RIGHT OF ENTRY

The STATE hereby grants and conveys to the UTILITY the right of entry upon all land which the STATE has interest, within or adjacent to the right of way of the highway, for the purpose of performing the work herein.

IV AUTHORITY TO BEGIN WORK AND SCHEDULE OF WORK

The UTILITY agrees not to commence work until after this AGREEMENT has been executed and the authorization to proceed with the work has been issued. Reimbursement will be limited to those costs incurred subsequent to these dates.

The UTILITY agrees to schedule the work herein referred to and perform said work in such a manner as not to delay or interfere with the STATE's project.

V EXTRA WORK

Reimbursement for costs in excess of the amount shown in the heading of this AGREEMENT shall be limited to costs authorized by a written modification to this AGREEMENT approved by the STATE.

VI LEGAL RELATIONS

The UTILITY shall indemnify and hold the STATE and its agents, employees, and/or officers harmless from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the STATE arising out of, in connection with, or incident to the execution of this AGREEMENT and/or the UTILITY's performance or failure to perform any aspect of this AGREEMENT. Provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the UTILITY and (b) the STATE, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the UTILITY, and Provided further, that nothing herein shall require the UTILITY to hold harmless or defend the STATE, its agents, employees, and/or officers from any claims arising from the sole negligence of the STATE, its agents, employees, and/or officers. This indemnification shall survive any termination of this AGREEMENT.

In the event that either party to this AGREEMENT deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action or proceedings shall be brought in a court of competent jurisdiction situated in Thurston County, Washington.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

UTILITY

By _____

Title _____

Date _____

STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION

By _____

Title _____

The funding for this project was approved under Work Order _____
on the _____ day of _____, _____. The UTILITY is hereby authorized to proceed with the work
authorized under this AGREEMENT by the State of Washington Department of Transportation
on the _____ day of _____, _____. .

Utilities Engineer _____